

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6285

BILL NUMBER: HB 1009

NOTE PREPARED: Feb 28, 2014

BILL AMENDED: Feb 27, 2014

SUBJECT: Search Warrants and Privacy.

FIRST AUTHOR: Rep. Koch

FIRST SPONSOR: Sen. Steele

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Search Warrant* – It requires a law enforcement officer to obtain a search warrant in order to use an unmanned aerial vehicle, with certain exceptions.
- B. *Exceptions for Video Toll Collection Activities* – It exempts electronic or video toll collection activities and facilities from certain restrictions relating to video and electronic surveillance and data collection.
- C. *Prohibitions* – It provides that a law enforcement officer may not compel a person to provide a passkey, password, or keycode to any electronic communication service, electronic device, or electronic storage, or any form of stored electronic user data without a valid search warrant issued by a judge. It prohibits a law enforcement officer or law enforcement agency from using a real-time tracking instrument that is capable of obtaining geolocation information concerning a cellular device or a device connected to a cellular network unless certain conditions are met.
- D. *Class A Misdemeanor* – It provides that, except for a law enforcement officer or governmental entity who has obtained a search warrant, a person who knowingly or intentionally places a camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person without the consent of the owner or tenant of the private property commits a Class A misdemeanor.
- E. *Immunity and Liability* – It establishes a procedure to use electronic mail to apply for a warrant. It provides immunity from civil and criminal liability for certain entities that provide information pursuant to certain court orders.
- F. *Procedural Changes* – It provides certain procedures for the issuance of search warrants concerning electronic communication service or remote computing service that affect the law concerning a

- journalist's privilege against disclosure of an information source.
- G. *Interim Study Committee* – It urges the Legislative Council to assign to a study committee during the 2014 legislative interim the topic of digital privacy, including: (1) issues related to searches of electronic devices, compelling the disclosure of electronic user data, the collection and use of geolocation information, and the collection and use of biometric information by government agencies; and (2) any other issue concerning digital privacy and related subjects.

Effective Date: July 1, 2014.

Explanation of State Expenditures: *Interim Study Committee* – The Legislative Council could assign the topic about digital privacy to an existing interim study committee or establish a new interim study committee to study this topic during the next interim. Interim study committees operate on budgets established by the Legislative Council based on committee size. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$9,500 per interim for committees with fewer than 16 members and \$16,500 for committees with 16 members or more. If the Legislative Council were to assign this topic to an existing committee and the committee were to have any extra meetings to address this topic, there would be additional expenditures for legislator per diem and travel reimbursement for the committee members. Any additional expenditures must be within the committee's budget.

Explanation of State Revenues: *Class A Misdemeanors* – There are no data available to indicate how many offenders may be convicted of using a tracking device without consent or knowingly or intentionally placing a camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit or superior court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the automated record keeping fee (\$7), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Explanation of Local Expenditures: *Class A Misdemeanors* – A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Class A Misdemeanors* – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

State Agencies Affected: Judicial Center, law enforcement.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: Mark Goodpaster, 317-232-9852